



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

December 21, 2023

By E-mail

[Name]

[Address]

Re: Advisory Opinion Request Pursuant to 28 C.F.R. § 5.2

Dear [Name]:

We write in response to your letter of October 10, 2023,¹ and in response to your e-mails of October 27, 2023,² and November 16, 2023,³ requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2, as to [U.S. Firm's] obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* ("FARA" or "the Act"). Based on the representations made in your three communications with this office, we conclude that [U.S. Firm] would have an obligation to register under FARA if it were to engage in the proposed activities.

Background

According to the October 10 Letter, [U.S. Firm] is a non-profit organization, based in the United States, whose core mission is to address atrocity crimes, including genocide, war crimes, and crimes against humanity.⁴ The letter asserts that since [Event], [U.S. Firm] has engaged in [Foreign Country] to assist in documenting international crimes and harms, conducting police training, and assisting prosecutors and judges in documenting and prosecuting mass atrocity cases. The October 10 Letter states that [U.S. Firm] contributes to [Foreign Country's] case files by providing satellite imagery, open-source knowledge, and other knowledge/technical-based support to further [Foreign Country] justice initiatives.

The October 10 Letter recounts:

In May 2023, [U.S. Firm] was connected with [Foreign Person], an Advisor employed by [Foreign Government Office]. [Foreign Person] expressed interest in [U.S. Firm's] ability to provide [Foreign Country's] sanctions working group, and more broadly, [Foreign Country's] international efforts towards accountability for sanctions violators with knowledge/technical-based support.⁵

¹ [Redacted]

² [Redacted]

³ [Redacted]

⁴ [Redacted]

⁵ October 10 Letter.

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You also note that [U.S. Firm's] introduction to [Foreign Person] "was premised on the understanding that [U.S. Firm] was seeking to assist the [Foreign Country] authorities in their quest for accountability for war crimes."⁶

Pursuant to conversations between [U.S. Firm] and [Foreign Person], the parties identified three areas in which [U.S. Firm] could provide support:

1. [Title], in which [U.S. Firm] would support [Foreign Government Agency] by helping to identify [] violators in the area of [Foreign Activity]. [U.S. Firm] would prepare packages of information based on existing data.
2. [Title] by following through on [U.S. Firm's] intent to work in collaboration with and employ consultants with the [Foreign National University] to increase understanding of the impacts of sanctions violations on [Foreign Country's] economy and food security and the enrichment of [Foreign] actors. The goal of the research would be to identify potential military and business functions operating in violation of sanctions and develop capacity, with the assistance of third parties, to track and trace assets.
3. [Title]: [U.S. Firm] will provide informational packages to [Foreign Person] and [Foreign Government Agency]. Information obtained in conjunction with the [Foreign National University] would be provided to [Foreign Government Agency] in the same manner.⁷

The November 16 e-mail details additional activities that [U.S. Firm] proposes to conduct within [Foreign Country] in conjunction with the [Foreign] government. The activities include conducting trainings for police, prosecutors, and national judges in documenting, prosecuting, and adjudicating war crimes cases, a majority of which relate to the pillage of grain.⁸ In addition, [U.S. Firm] plans to complement [Foreign Government] legal files by providing specific forms of evidence when requested.⁹

According to your October 27 e-mail, there is no formal agreement in place between [U.S. Firm] and the [foreign] government. The November 16 e-mail clarifies that the parties have contemplated a memorandum of understanding (MOU) to describe the types of information that could be provided to the [foreign] government by [U.S. Firm]. According to the November 16 e-mail, such an MOU would confirm that [U.S. Firm] retains discretion as to what information, if any, it would provide to the [foreign] government and that neither [Foreign Person] nor [Foreign Country] authorities would pay [U.S. Company] for doing so.

Your submission notes that [U.S. Firm] plans to interact with U.S. government officials as well. According to the November 16 e-mail, "[U.S. Firm] will provide information and consult with the State Department and U.S. Treasury in regard to information relevant to entities that may be

⁶ November 16 E-mail.

⁷ October 10 Letter.

⁸ November 16 E-mail.

⁹ *Id.*

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subject to sanctions.” The e-mail further states that “sanctions submissions would be based on [U.S. Firm’s] own investigations and [U.S. Firm] would retain all control over decision-making as to its investigations and submissions” to U.S. authorities and that “[U.S. Firm] does not provide its sanctions submissions to the [Foreign Government] authorities, nor can any [foreign] exercise any direction or control over such submissions.”¹⁰

You seek an opinion as to whether [U.S. Firm] has an obligation to register under FARA based on the representations made in the October 10 letter, the October 27 e-mail, and the November 16 e-mail.

FARA Analysis

FARA’s definition of a “foreign principal” includes a “government of a foreign country”¹¹ and a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”¹² Because [Foreign Government] Office and the [Foreign Government Agency]¹³ are agencies of the [Foreign] Government, they qualify as foreign principals under FARA. The [Foreign National University] is an organization organized under the laws of [Foreign Country] that has its principal place of business in [Foreign Country], so it qualifies as a foreign principal as well.

Under FARA, an “agent of a foreign principal” is defined to include:

(1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal,” and who, within the United States, directly or through any other person:

(i) engages in political activities¹⁴ for or in the interests of the foreign principal;

¹⁰ Such statements are not dispositive on the question of whether a person has an obligation to register under FARA.

¹¹ 22 U.S.C. § 611(b)(1).

¹² 22 U.S.C. § 611(b)(3).

¹³ [Redacted]

¹⁴ The term “political activities” means “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.” 22 U.S.C. § 611(o).

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(ii) acts as a public-relations counsel,¹⁵ publicity agent,¹⁶ information-service employee¹⁷ or political consultant¹⁸ for or in the interests of such foreign principal;

(iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or

(iv) represents the interests of such foreign principal before any agency or official of the Government of the United States[.]¹⁹

FARA defines “person” to include corporations.²⁰ FARA’s implementing regulations define “control” to include “the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.”²¹

Thus, under FARA, agency can arise when a person acts “at the order, request, or under the direction or control, of a foreign principal” in covered activities.²² Thus, whether a person is an “agent of a foreign principal” under FARA depends on three factors: (1) the existence of a foreign principal; (2) the nature of the relationship between the person and the foreign principal; and (3) whether the person is engaging in specified activities within the United States for or in the interests of such foreign principal. When all three parts of the inquiry are established, an obligation to register under FARA will arise.

¹⁵ The term “public-relations counsel” includes “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.” 22 U.S.C. § 611(g).

¹⁶ The term “publicity agent” includes “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h).

¹⁷ The term “information-service employee” includes “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country.” 22 U.S.C. § 611(i).

¹⁸ The term “political consultant” means “any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.” 22 U.S.C. § 611(p).

¹⁹ 22 U.S.C. § 611(c)(1)(i)-(iv).

²⁰ 22 U.S.C. § 611(a).

²¹ 28 C.F.R. § 5.100(b).

²² 22 C.F.R. § 611(c)(1).

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With respect to [U.S. Firm's] inquiry, the October 10 letter, as noted above, identified several foreign principals, each of which falls under the definition of foreign principal contained in the Act,²³ with whom [U.S. Firm] plans to interact. These foreign principals, named in the October 10 Letter, are [Foreign Person], through [Foreign Government Office], [Foreign Government Agency], and the [Foreign National University].

[U.S. Firm's] planned activities include registrable conduct under the Act. Among other things, [U.S. Firm] "will provide information and consult with the State Department and U.S. Treasury in regard to information relevant to entities that may be subject to sanctions."²⁴ Proposing sanctions targets to the U.S. government requires registration because it is intended to "influence any agency or official of the Government of the United States . . . with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interest, policies, or relations of a [Foreign Country]"²⁵ and therefore constitutes "political activities" under the Act. It also requires registration because it qualifies as "represent[ing] the interests of [Foreign Government] before any agency or official of the Government of the United States."²⁶

However, [U.S. Firm] suggests that its submission of sanctions nominations to the U.S. government would not give rise to a registration obligation because this activity would not be directed or controlled by the government of [Foreign Country] or any [foreign] entity.²⁷ Instead, [U.S. Firm] vows to "retain all control over decision-making as to its investigations and find submissions[.]"²⁸ Accordingly, [U.S. Firm] asserts that "no 'political activities' as defined in the Act would be undertaken by [U.S. Firm] as an agent of any [foreign] entity."²⁹

Notwithstanding this disclaimer, the facts recounted in your submissions reveal that [U.S. Firm] is acting as an agent of [foreign] entities. While [U.S. Firm] claims that it had "no meeting of the minds (written or unwritten)" with [Foreign Person],³⁰ its conversations with him resulted in an agreement on areas where [U.S. Firm] could provide support to [foreign] government efforts to identify and hold accountable those who violate sanctions. Specifically, [U.S. Firm] agreed to identify suspected violators, to train [foreign] police, prosecutors, and judges to do so, and to

²³ Under FARA, the term "foreign principal" includes: (1) a government of a foreign country and a foreign political party; (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States; and (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country. 22 U.S.C. § 611(b).

²⁴ November 16 E-mail.

²⁵ 22 U.S.C. § 611(o).

²⁶ 22 U.S.C. § 611(c)(1)(iv).

²⁷ November 16 E-mail.

²⁸ *Id.*

²⁹ *Id.*

³⁰ November 16 E-mail.

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provide evidence of sanctions violations to those authorities.³¹ While no formal agreement exists, the identification of these specific activities and the fact that the parties have contemplated executing an MOU to describe the types of information that could be provided to the [foreign] government serves to establish that [U.S. Firm] has agreed to act under the control of the [foreign] entities.³²

Having established that [U.S. Firm] has an agency relationship with the [foreign] government entities, it is irrelevant to the FARA analysis that—as you suggest—those entities are not directing [U.S. Firm]’s sanctions submissions to the U.S. government. [U.S. Firm]’s above-described arrangement with the [Foreign Country] entities establishes the requisite agency relationship under FARA. As a result, [U.S. Firm]’s political activities for and in the interests of its foreign principals constitute registrable conduct under the Act. This is true even if [U.S. Firm] were to “retain all control over decision-making as to its investigations and submissions” because under the plain language of the statute, once an agency relationship is established, there is no requirement that the registrable conduct be specifically directed by the foreign principal.³³

Even so, the registrable conduct identified here—proposing sanctions targets to U.S. government agencies—appears to be part and parcel of [U.S. Firm]’s agreement to “support [Foreign Government Agency] by assisting in designations and strategies[.]”³⁴ [U.S. Firm] would likely report the same conduct and identify the same suspected sanctions violators to both the [foreign] and United States governments. Even if it does not, however, these political activities would clearly benefit its foreign principals.

Therefore, because the facts described in the October 10 letter, the October 27 e-mail, and the November 16 e-mail describe activities that satisfy the elements of agency under FARA, we assess that [U.S. Firm] would be required to register if it were to engage in the proposed activities.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact the FARA Unit at (202) 233-0776 or by e-mail to FARA.Public@usdoj.gov if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon

³¹ October 10 Letter; November 16 E-mail.

³² October 10 Letter. *See* 22 U.S.C. § 611(c)(2) (defining agency to encompass those who agree to form an agency relationship); 28 C.F.R. § 5.100(b) (defining “control”).

³³ *See* 22 U.S.C. § 611(c)(1) (defining “agent of a foreign principal” as “any person who acts [pursuant to an agency relationship] . . . and who directly or through any other person” engages in registrable conduct).

³⁴ October 10 Letter. We note that a number of the proposed activities contemplated by [U.S. Firm], such as training police, prosecutors, and national judges in [Foreign Country], will take place outside the United States and, importantly, are not intended to have an effect on the United States government or any section of the public inside the United States. While these activities may not, by themselves, be considered registrable, such activities may be subject to disclosure pursuant to 22 U.S.C. § 612(a).

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Chief, FARA Unit